

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

COREY RICHARD HORNE,	:	
Petitioner	:	
	:	
v.	:	Civil Action No. 1:11-cv-1062
	:	(Chief Judge Kane)
	:	
THOMAS KEARNEY, District Attorney,	:	(Magistrate Judge Blewitt)
York County, and MARY SABOL,	:	
Warden York County Prison,	:	
Respondents	:	

MEMORANDUM ORDER

Pending before the Court is the Report and Recommendation of Magistrate Judge Blewitt (Doc. No. 6), addressing Petitioner's habeas corpus petition pursuant to 28 U.S.C. § 2254 (Doc. No. 1). On July 29, 2011, Petitioner filed objections to the Report and Recommendation. (Doc. No. 9.) The Court will adopt the Report and Recommendation in full, but will write briefly to address Petitioner's objections.¹

The background of this case is set forth in Judge Blewitt's Report and Recommendation and need not be fully reproduced here. Pursuant to the Interstate Agreement on Detainers ("IAD"), Petitioner was extradited to York County, Pennsylvania from Maryland, where he is serving a twenty-year sentence for armed robbery. (Doc. No. 6 at 5.) Petitioner was extradited to Pennsylvania to face bank robbery charges. (*Id.* at 2.) The Pennsylvania bank robbery charges against Petitioner were dismissed with prejudice by the Court of Common Pleas of York

¹ The Magistrate Act, 28 U.S.C. § 636, and Federal Rule of Civil Procedure 72(b), provide that any party may file written objections to a magistrate's proposed findings and recommendations. In deciding whether to accept, reject, or modify the Report and Recommendation, the Court is to make a *de novo* determination of those portions of the Report and Recommendation to which objection is made. 28 U.S.C. § 636(b)(1).

County, Pennsylvania, on April 13, 2011, after the court found that the District Attorney's office did not try Petitioner on the charges within the time required by the IAD. (Id. at 3.) The District Attorney's office appealed this dismissal to the Pennsylvania Superior Court and directed York County Prison to continue custody of Petitioner pending the appeal. (Id.) On April 18, 2011, Petitioner filed a motion to compel in the Court of Common Pleas of York County, Pennsylvania, seeking to have the District Attorney's office release him back to Maryland. (Id.) The York County Court of Common Pleas denied Petitioner's motion on April 26, 2011, holding that it no longer had jurisdiction over Petitioner's case because of the appeal. (Id.) The Pennsylvania Superior Court has not yet ruled on the District Attorney's office's appeal. (Id.)

In his petition, Petitioner claims that he should be released from custody at York County Prison and returned to Maryland because the Pennsylvania bank robbery charges against him were dismissed with prejudice. (Doc. No. 1 at 1.) Judge Blewitt preliminary screened the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (1977) (applicable to § 2241 petition under Rule 1(b)). See Patton v. Fenton, 491 F. Supp. 156, 158-59 (M.D. Pa. 1979). After noting that Petitioner is requesting that the Court decide issues which can be raised in the pending state court appeal and finding that the state courts "have not yet had an opportunity to address the merits of Petitioner's claims attacking his detention," Judge Blewitt recommended that the petition be dismissed without prejudice for Petitioner's failure to exhaust state remedies. (Id. at 14, 15.) In his objections to the Report and Recommendation, Petitioner appears to argue that he has exhausted his state remedies because he presented the issue to the Pennsylvania Superior Court in a motion for relief, but the court deferred decision on his motion to the panel assigned to decide the merits

of the District Attorney's office's appeal. (Doc. No. 9 at 2.) It is clear that adequate state remedies exist and Petitioner is in the process of using these remedies. Accordingly, the Court finds no error in Judge Blewitt's finding that Petitioner's petition should be dismissed without prejudice for failure to exhaust state remedies.

ACCORDINGLY, on this 16th day of August 2011, **IT IS HEREBY ORDERED**
THAT:

1. The Court **ADOPTS** Magistrate Judge Blewitt's Report and Recommendation (Doc. No. 35). Accordingly, the petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.
2. The Clerk of Court is directed to close this case. No certificate of appealability shall issue.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania